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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2099 OF 2007

Engineering Enterprises .. Petitioner

Versus

The Union of India and Ors. .. Respondents

Mr. M.H. Patil with Ms. Aparna Hirandagi for the Petitioner.

Mr. A.S. Rao with Ms. H.P. Shah and Mr. H.P. Chaturvedi for Respondents.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: OCTOBER 25, 2007

P.C.

. Rule. Heard forthwith.

. The Petitioner approached this court against the order dated 20.02.2007 whereby the Respondent No. 1 has rejected the Petitioner’s application for duty draw back. It si the case of the Petitioner that Fibre Tip Pans which are the subject matter are covered under Entry No. 96.03 and are entitled to duty draw back. It is contended earlier, the Petitioners had claimed benefit under the Duty Exemption Passbook under Entry No. 1 of Product Code 03 which was rejected on the submission that it was not a writing instrument. It is submitted on

behalf of the Petitioners that in so far as the duty drawback scheme is concerned, and the relevant entry adverted to earlier, does not require that the fibre tip pen should be used for writing by hand. It is submitted that the internal evidence will indicate that the circular also included "mechanical pencil" which admittedly are not used by hand. It is therefore, submitted that Respondent No. 1 misdirected himself in law in following that judgment.

. Having considered the arguments advanced on behalf of the parties, we are of the opinion that Respondent No. 1 has to consider the duty draw back scheme independently of the proceedings under the DE. To that extent the order is without jurisdiction. The Respondent No. 1 is therefore, directed to reconsider the matter after hearing the parties and to pass appropriate orders according to law at any rate not latter than four months from today. The revision to be heard by the Jt. Secretary to Government of India, Ministry of Finance.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**